

SUPREME COURT OF INDIA

Chaitanya Prakash Audichya

Vs.

CBI

CrI.A.No.697 of 2011

(A.K.Sikri and Uday Umesh Lalit, JJ.,)

01.05.2015

JUDGMENT

Uday Umesh Lalit, J.,

1. This appeal by Special Leave challenges the judgment and order dated 06-12-2010 passed by the High Court of Bombay at Goa in Criminal Appeal No.12 of 2010 by which the High Court affirmed the conviction and sentence of the appellant under Sections 7 and 13(1)(d) and 13(2) of the Prevention of Corruption Act 1988 (hereinafter referred to as “the Act”).

2. The case of the prosecution was that PW1 Chandra Shekhar Bandari was sole proprietor of M/s JCS Associates, which firm was undertaking construction work for governmental agencies. The firm was awarded two contracts in March 2003 by Oil and Natural Gas Commission, Betul, Goa and it was mandatory requirement to have a licence from the office of the Assistant Labour Commissioner, (Central) Vasco. PW1 therefore applied for requisite licence vide applications, Exts. 31 and 32 with necessary documents along with prescribed fees and the applications were received in the office on 13-05-2003. According to PW1, he was told that the applications would be processed within seven to ten days. Since no communication was received within ten days, he approached the appellant who was then working as Assistant Labour Commissioner (Central) Vasco. PW1 was told by the appellant that his application would be duly processed. However nothing was heard in the matter.

3. According to the case of the prosecution the appellant was to visit the site of the proposed construction on 29-05-2003. PW1 was therefore present at the site. The appellant came and verified the documents at the site itself. According to PW1, the appellant was camping in the Rest House when PW1 went to meet him. The appellant had prepared Inspection Notes, Ext. 33 bearing signatures of the appellant and PW1. In the rest house the appellant allegedly demanded Rs.30,000/- towards illegal gratification for issuance of licence to PW1. The appellant told him to pay Rs.10,000/- by next day and the balance amount of Rs.20,000/- was to be paid after issuance of the licence.

4. On the next day i.e. on 30.05.2003 PW1 decided to file a complaint against the appellant in the office of CBI, Panaji and gave written complaint, Ext. 34 which was received at 1.15 pm in the office. The necessary approval having been received at 1.56 pm, appropriate steps for registering the crime and to lay a trap were undertaken. A request was sent to the office of Assistant General Manager, Bank of India, Panaji at about 2.25 pm to depute two officers from the Bank to act as panch witnesses. In the mean time FIR was registered at 3.15 pm in pursuance of said complaint Ext. 34. Accordingly PW2 Ranjit Singh Thakur and one Karapurkar, both officials from the Zonal Office of Bank of India were sent to act as panch witnesses at about 4.30 pm. Pre trap proceedings were undertaken. The numbers of three currency notes of Rs.1000/- each and fourteen notes of Rs.500/- each produced by PW1 were noted. Phenolphthalein powder was applied to the currency notes. The panch witnesses and PW1 were explained and briefed about the trap and those currency notes were kept in the shirt pocket of PW1 with instructions not to touch those notes unless and until demand was made by the appellant. The members of the raiding party then left the office of CBI at about 5.30 pm. Since PW1 was unaware about the residential address of the appellant, the party first went to his office where one of the clerks gave the residential address of the appellant, whereafter the party proceeded to his residence. PW1 along with PW2 went to the house of the appellant which was situated on the ground floor of a building. The door was opened by wife of the appellant who told PW1 that the appellant was not available and that he had told her that in case PW1 came, he should be asked to wait. She further conveyed that the appellant would be back after 10.00 pm where upon PW1 told her that they would come back later and left the place. The raiding party then waited till 10.00 pm.

5. At about 10.15 pm PW1 and PW2 went to the residence of the appellant who opened the door and invited them inside. The appellant asked PW1 whether he had brought Rs.10,000/- as told by the appellant. Thereafter PW1 handed over the amount of Rs.10,000/- kept in his shirt pocket to the appellant who told him that the licence would be issued on Monday i.e. 02.06.2003. The appellant then kept the amount in his T-shirt pocket. PW2 was all the while sitting with PW1. PW2 then came out of the house and upon his signaling the raiding team went inside. The wrist of the right hand of the appellant was caught- hold of and the fingers of his right hand upon being dipped, the solution turned pink. The numbers of currency notes were verified and the portion of T-shirt of the appellant also turned pink upon being dipped in the solution. Post-trap panchnama was drawn. The search of the house of the appellant conducted thereafter resulted in recovery of cash leading to registration of a separate case against him with which we are presently not concerned.

6. The investigation was completed and appropriate sanction was granted for prosecuting the appellant for the offences punishable under Sections 7 and 13(1)(d) and 13(2) of the Act. The charges were framed and the matter was tried in the court of Special Judge, Goa at Madgaon vide Special Case No.6 of 2009. The prosecution principally relied upon the evidence of PW1 and PW2 to establish the demand and acceptance of gratification by the appellant. PW1 also deposed to the facts regarding his application for issuance of licence, his meeting with the appellant in the Rest House on 29.05.2003, the demand made by the appellant at that time and his complaint lodged on the next day. He further deposed that the appellant had asked him to come to his house after office hours on 30.05.2003 along with bribe amount and that

when the wife of the appellant opened the door of the house she said that the appellant had conveyed that in case PW1 came, he be asked to wait. PW2 while supporting the version of PW1, stated that when PW1 asked about his licence, the appellant told him that in case PW1 paid the agreed amount the appellant would issue the licence on the next day. The witness further stated that PW1 thereafter took out and gave the money to the appellant which was kept by the appellant in his T-shirt pocket. PW3 Sadanand Naik, Upper Division Clerk in the office of the Assistant Labour Commissioner, Vasco stated that the applications preferred by PW1 were registered on 13.05.2003, that those applications were in order, that the appellant had told PW3 to keep those applications pending and that similar applications were disposed of normally within 2-3 days. PW6 Police Inspector Chonkar Investigating Officer deposed about the various steps during the course of the trap proceedings including pre-trap and post-trap panchnama.

7. The appellant examined his immediate successor in office Shri Karamchand as DW1 and himself as DW2. It was his case that after conducting inspections at various sites on 30.05.2003 he returned home at 10.30 pm and while he was preparing to retire two unexpected visitors, namely, PW1 and PW2 came to his residence. It was further deposed that PW1 had pushed something in his shirt pocket whereupon the appellant put his hand in the pocket to find out what it was, when someone who had entered his house caught hold of his hand. He further stated that after the raid, he was placed under arrest and was released on bail on 04.06.2003 whereafter he wrote letter dated 10.06.2003 to the Secretary, Ministry of Labour.

8. However, the version in said letter dated 10.06.2003, on which the appellant heavily relied and which was also placed on record in the present appeal, was to the following effect:
“After conducting inspections when I returned back at home around 10.15 pm two persons i.e. Shri Chandra Shekar along with another person forcefully entered in my house and pressurized me to accept some bribe and demanded to serve cold drinks. Since this was an odd time and nobody was available nearby to help hence I acted as per their desire. They forcefully dropped some rupees in my pocket and threatened me. Since myself was alone with my wife and I was very much tired after conducting lot of inspections in remote area and due to long journey I was not in a position to think much to come out from the situation. After that immediately, some CBI Officers entered and pressurized me to take out the money from my pocket. When I requested them that this fellow has forcefully put this money in my pocket and if they want they can take it from my pocket and that I am not aware also that how much money they have put in my pocket, the CBI Officers were not ready to listen to my request and they pressurized me to take out the money with my own hand.”

9. The trial court after considering the material on record came to the conclusion that the case against the appellant stood fully established and that he had abused his position as public servant by accepting illegal gratification and had committed offences as alleged. The trial court convicted the appellant under Section 7 of the Act and sentenced him to suffer imprisonment for one year and to pay fine of Rs.10,000/-, in default whereof to suffer simple imprisonment for two months. The appellant was also convicted under Section 13(1)(d) read with Section 13(2) of the Act and sentenced to suffer imprisonment for one year and to pay

fine of Rs.10,000/-, in default whereof to undergo simple imprisonment for two months. Both the sentences were ordered to run concurrently. The appellant preferred Criminal Appeal No.12 of 2010 in the High Court and the High Court by the judgment under appeal confirmed the conviction and sentence as ordered by the trial court. In this appeal by special leave, the appellant was directed to be released on bail, which facility he continues to enjoy.

10. Shri R. Venkataramani, learned senior Advocate along with Shri Manu Mridul, learned Advocate appearing in support of the appeal submitted inter alia, that (1) the FIR in the present case was registered at 3.15 pm on 10.05.2003 whereas the services of the panch witnesses were requisitioned at about 2.25 pm i.e. even before the registration of the crime. (2) In the complaint Ext.34 the place and time for acceptance of money as demanded by the public servant was not mentioned at all. (3) The fact that on the day in question the raiding party first went to the office also indicated the absence of fixing of such definite place and time; which makes the case of the prosecution completely suspect. (4) The entire trap was undertaken without making any preliminary investigation which as per the CBI manual ought to have been undertaken first. (5) The way the raiding party had conducted itself showed it was clearly a case of the public servant being chased. (6) The appellant was responsible for having initiated certain proceedings against PW1 and thus the present complaint was not bona fide.

11. In support of these submissions reliance was placed on the decisions of this Court in *P. Parasurami Reddy v. State of Andhra Pradesh*¹, *Banarsi Dass v. State of Haryana*² and *State of Punjab v. Madan Mohan Lal Verma*³.

12. Shri P.K. Dey, learned Advocate appearing for the respondent, while countering the aforesaid submissions submitted that after receipt of the complaint at about 1.15 pm on 30.05.2003 the requisite approval was received on fax at about 1.56 pm, whereafter looking to the allegations in the complaint that the money had to be given that very day, immediate steps were undertaken. As part of the exercise, services of panch witnesses were requisitioned while the FIR was being registered. He further submitted that since the money had to be paid by 30.05.2003, because of paucity of time no preliminary investigation was undertaken. Relying on the testimony of PW3 he submitted that the applications preferred by PW1 were ordered by the appellant to be kept pending and that the acceptance of gratification on the day in question completely clinched the matter. Relevant currency notes were found in possession of the appellant and in his submission the aspect of demand and acceptance also stood proved by consistent versions of PW1 and PW2.

13. We have gone through the record and considered the relevant material. The fact that PW1 was awarded contracts by ONGC and that it was a mandatory requirement to have the requisite licence from the office of the Assistant Labour Commissioner is well established. Further the fact that PW1 preferred applications Exts.31 and 32 for necessary licences is also established on record. According to PW3 the applications were registered on 13.05.2003 and that the applications were in order. Furthermore, according to this witness such applications would normally be dealt with in 2-3 days and that the applications were kept pending because of the instructions of the appellant himself. Though a feeble attempt was made to

submit that there were interpolations in the applications, the assertion that the applications were complete and kept pending because of instructions of the appellant could not be controverted. We, therefore, accept that the applications were complete in all respects and as stated by PW3 they were kept pending because of the instructions of the appellant. It is also part of the record that the site in question was inspected by the appellant on 29.05.2003 as the inspection notes Ext.33 would disclose. The assertion on part of PW1 that he had an occasion to meet the appellant that day is well supported. Though it was denied that any meeting had taken place in the Rest House where demand was made as alleged, the facts as they stand unfolded, fully substantiate the assertion made by PW1.

14. Complaint Ext.34 preferred on 30.05.2003 itself disclosed that the money was demanded and that the complainant was asked to make the payment by 30.05.2003 itself. Given the assertions in the complaint, the submission that no preliminary investigation could be undertaken because of paucity of time is well founded. At the same time the incongruity in the timing when services of panch witnesses were sought for also pales into insignificance. It is true that the complaint did not state or suggest any time and place at which the complainant was supposed to fulfill the demand. Though in *P. Parasurami Reddy v. State of Andhra Pradesh* (supra) there are certain observations that there was no prior commitment fixing the time and place for receiving the bribe, the decision discloses that there were various other circumstances which weighed with this Court. In any case, the facts in the present case show otherwise. It was asserted by the complainant in his examination that he was asked by the appellant to see him at his residence after the office hours. Further, when PW1 and PW2 went to the house of the appellant, the conversation which PW1 had with wife of the appellant clearly shows that the visit of PW1 was quite expected. On this issue there was no effective cross examination at all. It would therefore be inconsequential if no prior commitment regarding fixing of the time and place for receiving the bribe was mentioned in the complaint.

15. In the present case the versions of PW1 and PW2 are completely consistent establishing the basic ingredients of demand and acceptance. The tainted currency notes were found on the person of the appellant. The explanation give by him soon after the incident through his letter dated 10.06.2003 is completely different from the theory put forth while the appellant examined himself as DW2. In our view, the demand and acceptance thus not only stand fully established but the presumption invocable under Section 20 of the Act also stood un rebutted.

16. The other two cases cited by the appellant dealt with situations where the demand and acceptance were not fully established and despite that an attempt was made to rely on the presumption invocable under Section 20 of the Act. Such is not the case in the present matter. It is further well established that where misconduct is proved, the alleged enmity between the complainant and the delinquent officer is immaterial. (*See B. Hanumantha Rao v. State of A.P.*⁴).

17. In the circumstances we are not persuaded to take a view different from the one which weighed with the courts below. Affirming the decisions taken by the High Court and the trial court, we dismiss the present appeal. The bail bonds stand cancelled and the appellant shall be taken in custody forthwith to undergo the sentence awarded to him.

¹(2011) 12 SCC 0294

²(2010) 4 SCC 0450

³(2013) 14 SCC 0153

⁴(1993) Supp. (1) SCC 0323